

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

LEONARD C. GILMORE

Petitioner,

-v-

Case No. C-3:12-cv-163

Judge Thomas M. Rose
Magistrate Judge Sharon L. Ovington

MONTGOMERY COUNTY
COMMON PLEAS COURT,¹

Respondent.

ENTRY AND ORDER OVERRULING GILMORE’S OBJECTIONS (Doc. #4) AND SUPPLEMENTAL OBJECTIONS (Doc. #5) TO THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATIONS (Doc. #3) IN ITS ENTIRETY; DISMISSING GILMORE’S PETITION FOR A WRIT OF HABEAS CORPUS WITH PREJUDICE; DENYING ANY REQUESTED LEAVE TO APPEAL IN FORMA PAUPERIS AND ANY REQUESTED CERTIFICATE OF APPEALABILITY; AND TERMINATING THIS CASE

This matter comes before the Court pursuant to pro se Petitioner Leonard C. Gilmore’s (“Gilmore’s”) Objections (doc. #4) and Supplemental Objections (doc. #5) to Magistrate Judge Sharon L. Ovington’s Report and Recommendations (doc. #3). Upon review, as required by Rule 4 of the Rules Governing § 2254 cases, the Magistrate Judge recommends that Gilmore’s Petition for a Writ of Habeas Corpus be dismissed with prejudice because it plainly appears that Gilmore’s Petition is time-barred and that equitable tolling does not apply.²

¹Although it appears that Gilmore was incarcerated in the Chillicothe Correctional Institution and the Warden thereof is the proper Respondent, the case caption should remain the same to maintain docketing continuity.

²It appears from the record that Gilmore is not currently incarcerated, on probation or otherwise still serving a sentence. Thus, even if not time barred, Gilmore’s Petition may not meet

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Gilmore's Objections and Supplemental Objections to the Magistrate Judge's Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations is adopted in its entirety.

Gilmore's Petition for a Writ of Habeas Corpus is given preliminary consideration as required by Rule 4 of the Rules Governing § 2254 Cases. Pursuant to this consideration, Gilmore's Petition must be dismissed with prejudice because it is time-barred and equitable tolling does not apply. It plainly appears from the Petition and any attached exhibits that Gilmore is not entitled to relief in this Court.

Further, because reasonable jurists would not disagree with this conclusion, Gilmore is denied leave to appeal in forma pauperis and any requested certificate of appealability. Finally, the captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and ORDERED in Dayton, Ohio, this Seventeenth Day of July, 2012.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Leonard C. Gilmore at his last address of record

the "in custody" requirement of 28 U.S.C. § 2254(a) for this Court to have jurisdiction.